FILED
NOV 21 1975

No. 75-616

In the Supreme Court of the United States

OCTOBER TERM, 1975.

VILLAGE OF ARLINGTON HEIGHTS, ET AL.,
Petitioners,

vs.

METROPOLITAN HOUSING DEVELOPMENT CORPORATION, ET AL.,
Respondents,

NORTHWEST OPPORTUNITY CENTER and ELUTERIA D. MALDONADO,
Intervening Respondents.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Seventh Circuit

BRIEF FOR THE RESPONDENTS IN OPPOSITION

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November 20, 1975

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BRIEF FOR THE RESPONDENTS IN OPPOSITION

QUESTIONS PRESENTED FOR REVIEW

1. Do municipal defendants violate the Fair Housing Act of 1968 (42 U.S.C. §§3601 *et seq.*) and the Civil Rights Act of 1866 (42 U.S.C. §1982) by perpetuating racial segregation through refusing, without a compelling public interest, to rezone property so as to permit an integrated housing development which would appreciably diminish segregation in the municipality, especially when historically the area is racially segregated through the operation of dual housing markets and the municipal defendants have accommodated the housing needs of the municipality's white residents but have not in the past sponsored or participated in any subsidized housing development?

2. In an area segregated racially through the operation of dual housing markets, do municipal defendants who have accommodated the housing needs of the municipality's white residents but have not in the past sponsored or participated in any subsidized housing developments violate the Fourteenth Amendment and the Civil Rights Act of 1871 (42 U.S.C. §1983) by perpetuating racial segregation through refusing, without a compelling public interest, to rezone property so as to permit an integrated housing development which would appreciably diminish segregation in the municipality?

CONSTITUTIONAL PROVISION AND STATUTES INVOLVED

In addition to the statutes and constitutional provision set forth in Appendix D to the Petition, this case involves:

> 42 U.S.C. §3617. *Interference, coercion, or intimidation; enforcement by civil action.* It shall be unlawful to coerce, intimidate, threaten, or interfere with any persons in the exercise or enjoyment of, or on account of his having exercised or enjoyed, or on account of his having aided or encouraged any other person in the exercise or enjoyment of, any right granted or protected by §§3603, 3604, 3605, or 3606 of this title. This section may be enforced by appropriate civil action.

STATEMENT

On September 28, 1971, the Trustees of the Village of Arlington Heights refused to rezone a fifteen-acre parcel of land, bounded on two sides by single-family homes,* upon which respondent MHDC proposed to build Lincoln Green, a low- and moderate-income housing development for which MHDC had spent $38,000 planning and designing. (Tr. 276) Lincoln Green, unlike the rest of the Village, undoubtedly would have been an integrated community (Pet. App. A8)** which might well have increased the minority population of the Village by over 1000 percent (Pet. App. A8), and the question of racial integration

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* Petitioners' statement that the subject property is surrounded by land "developed for R-3 single-family use" is mistaken. While it abuts single-family homes on one side and on a second faces single-family homes across a major arterial street (Tr. 233-34, 391-92, 788-89), on two sides it abuts undeveloped St. Viator property. (Pet. App. A2)

** Thus petitioners' assertion that the Court of Appeals ruled that there was merely a "possibility" that Lincoln Green "might" contain a higher percentage of blacks than an R-3 single family subdivision built on the site (Pet. 8 and 9 respectively) is totally fallacious. Respondents had proved at trial that 40% of those eligible for Lincoln Green would be black (Pet. App. A6), that MHDC markets its housing so as to attract minorities (Tr. 45, 229) and that it had successfully done so elsewhere. (Tr. 251)

was clearly before the Trustees when they denied MHDC's application for rezoning.*

Lincoln Green will not be a highrise development, but merely a cluster of two-story townhouses no higher than the surrounding single family homes. As noted by two dissenting members of the Arlington Heights Plan Commission, in terms of density, architecture and most other characteristics, such townhouses are more similar to R-3 dwellings than R-5 buildings. (Pet. App. A10) Under the plan more than sixty percent of the property was to be maintained as open space. (Pet. App. A2) The buildings would cover 16% of the site while the abutting single-family homes cover 24% of the lots upon which they are located. (Tr. 377-78 and Ps. Ex. 11, p. 7). There would be better screening and traffic control within the development than could be provided in a single-family subdivision (Tr. 380 and 381). There would be no adverse impact upon municipal facilities and services (Ps. Ex. 14 and 15). The development would make a net contribution in terms of revenue to both the Village and the school districts within

* For example, one letter from a local resident appearing in the Arlington Heights Herald a month before the first Plan Commission hearing began:

> "Concerning your editorial, 'Housing: An Ignored Issue': It isn't ignored, it's unwanted. We do resist low-income housing because it is a ploy to export blacks from Chicago to integrate the suburbs. That came out forcefully in the St. Viator housing proposal." (Ps. Ex. 48-1).

Another letter complained:

> "I'm a bit tired of hearing and reading about the Low Income Housing in Arlington Heights for the benefit of our colored and Spanish-American friends in Chicago. One wonders who is running our village, our Mr. Walsh or Mayor Daley." (Ps. Ex. 48-2).

which it lies. (Pet. App. As-A3; Tr. 243-47 and Ps. Ex. 26, p. 5).

After the trustees denied the application for rezoning, this suit was instituted. Jurisdiction over the Village was based upon 28 U.S.C. §1331 (the jurisdictional basis of the Fourteenth Amendment claim), 28 U.S.C. §1343 (for the §1982 claim) and 42 U.S.C. §3612 (for the §§ 3604 and 3617 claim). Jurisdiction over the individual defendants, all officials of the Village, was based upon §1331 (for the Fourteenth Amendment claim), §1343 (for the §§ 1982 and 1983 claims, and §3612 (for the §§ 3604 and 3617 claims).

After a trial on the merits, the district court, concluding that there was no racial discrimination involved or other violation of constitutional or statutory rights, denied the plaintiffs any relief.* The Seventh Circuit, per Swygert, J., reversed.**

At the trial, evidence of prior zoning in Arlington Heights showed that petitioners rezoned 60 parcels of land

* Petitioners' argument that the trial judge's "findings" of no discrimination were reversed by the Court of Appeals without a determination that they were clearly erroneous (*see, e.g.,* Pet. 6, 9 and 10) ignores the simple fact that the "findings" to which petitioners refer are the trial judge's ultimate conclusions of law which were the subject of the appeal. The Court of Appeals accepted the few findings of the trial court and fleshed out the record when the trial court was silent on a necessary question of fact.

** Fairchild, Ch. J., dissented on a question of fact but agreed that, as a matter of law, "if plaintiffs establish that the Village's enforcement of its zoning scheme makes construction of housing for low and moderate-income individuals not reasonably possible, the refusal perpetuates racial segregation and, absent compelling governmental justification, the plaintiffs would be entitled to the relief they seek." (Pet. App. 11A)

in Arlington Heights to R-5 for large multi-family projects (e.g., Ds. Ex. 10 and 11), 53 of which were adjacent on at least one side to single-family homes (Ps. Ex. 12 and 52). As a result, there were some 5,239 market-rent apartments in Arlington Heights in 1970. (Tr. 692) By 1973 there were 6,085 and zoning for 9,073 more. (Pet. 5) However, the minimum monthly rents were so high that low- and moderate-income persons could not afford these apartments. (Tr. 77-79; 479-80; 489-90). Indeed, the Village President, a Village study, and the principal spokesman opposing Lincoln Green all publicly acknowledged the need for low- and moderate-income housing in the community (Final Pre-trial Order, Stipulation of Uncontested Facts, #20 and Ps. Ex. 43, pp. 3-4). The trial court found that such housing was scarce (Pet. App. B4), and the Court of Appeals noted the great demand for it. (Pet. App. A2)

While the Village accommodated the housing needs of the affluent whites who could afford the new apartments, it rejected the only two applications ever before it for rezonings to accommodate low- and moderate-income housing. (See Ds. Ex. 10, #21 and Tr. 853). It has no subsidized housing (Pet. App. A2), and the supply of low-cost housing in Arlington Heights is actually declining. (Tr. 483-84; Ps. Ex. 18, p. 19). MHDC was unable to find an economically feasible and suitable alternate site for Lincoln Green. (Pet. App. A8)

After taking judicial notice of the high degree of racial residential segregation in Chicago and its environs (Pet. App. A7), the Court of Appeals went on to set forth the detailed facts of residential segregation in Arlington Heights and its immediate area. See Pet. 7. According to statistics of plaintiffs' expert, demographer and urbanologist Pierre de Vise, Arlington Heights is the most residentially segregated community in the Chicago metropolitan area among municipalities with more than fifty thousand residents.* The percentage of Blacks in the four county area of which Arlington Heights is a part actually decreased from 1960 to 1970 while the percentage of the population in the entire Chicago metropolitan area that was black increased from fourteen percent to eighteen percent. (Pet. App. A7-A8)

As the Court of Appeals observed, the impact of this statistic can be fully appreciated only in the context of the shift in employment opportunities during the same period. While the City of Chicago lost 230,000 jobs, the number of jobs in the four-township Arlington Heights area rose from 100,000 to 200,000. Blacks, however, have not been able to take full advantage of these job opportunities. In 1970 only 137 of the 13,000 people who worked in Arlington Heights were black. Part of the explanation for this is that many black workers have been unable to find housing they can afford in Arlington Heights. (Pet. App. A7-A8)

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* Petitioners mistakenly characterize Prof. de Vise's testimony when they claim that he testified that 3,244 blacks could afford to live in Arlington Heights. (Pet. 10) That figure is the number of blacks who would hypothetically live in Arlington Heights in a color-blind market, assuming random dispersal based upon income and cost of housing.

ARGUMENT

The petitioners fail to identify the rule of the case which conflicts in any way with any of the cases they cite. Their rhetorical generalizations (Pet. App. 8) have no relationship to the decision below, which judged the impact, assessed in terms of historical context and ultimate effect (Pet. App. A7), of petitioners' refusal to rezone one parcel of land upon which a private developer sought to build integrated low and moderate-income housing. That historical context included two elements. First is "a high degree of racial residential segregation" (Pet. App. A7), quoting *Clark* v. *Universal Builders,* 501 F.2d 324, 334-5 (7th Cir.) *cert. denied,* 419 U.S. 1070 (1974), which, the Seventh Circuit noted in *Clark,* 501 F.2d at 334, resulted in dual housing markets in the Chicago metropolitan area. Second is the Village's exploitation of that problem in allowing itself to become almost 100% white (Pet. App. A9), by permitting the development of housing (including a great number of apartments) which was being marketed to and occupied by whites almost exclusively, by virtue of the dual housing markets, and by failing to sponsor or participate in any subsidized development (Pet. App. A8). In this context, the impact of petitioners' obstruction of one small private effort toward eliminating the pervasive problem of segregated housing, the court concluded, had a discriminatory effect and could not be justified by a compelling public interest. (Pet. App. A9-A10)

This ruling does not conflict with any decision of this Court or of the Courts of Appeals and does not raise an important question of federal law.

I.

There Is No Conflict of Decision.

1. There simply are no Supreme Court cases which deal with a municipality's duty not to interfere with private desegregation efforts. The cases petitioners cite are not in conflict with the decision of the Seventh Circuit.

The petitioners argue that there is no "right to housing," citing *Lindsey* v. *Normet,* 405 U.S. 56 (1972) and *San Antonio Independent School District* v. *Rodriguez,* 411 U.S. 1 (1973). (Pet. 13-14) Since neither respondents nor the court below has ever relied upon this theory of the case, these cases are irrelevant to the issue at bar. Similarly irrelevant is petitioners' argument that an ordinance which has a greater impact upon the poor than others is not, by virtue of that fact, unlawful. (Pet. 15) Respondents have never so argued, and the court below never so ruled.

Petitioners also argue that the decision conflicts with *James* v. *Valtierra,* 402 U.S. 137 (1971), and *Palmer* v. *Thompson,* 403 U.S. 217 (1971), which purportedly stand for the proposition that a classification which disproportionately impacts minorities is not thereby rendered unlawful. (Pet. 13 and 15) While respondents believe that these cases stand for no such proposition,* the court below

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* *Valtierra* dealt first with voter rather than governmental action, giving great deference to California's long tradition of referenda, and with a claim of economic rather than race discrimination. The Court ruled that the record simply did not support a case of racial discrimination (402 U.S. at 141), and the dissent addressed itself solely to the issue of economic discrimination. In *Palmer,* the challenged action was the closing by Jackson, Mississippi of the four

(footnote continued)

specifically refused to rule for respondents on the basis of the law's disproportionate impact. (Pet. App. A6-A7) The decision is thus consistent with petitioners' reading of *Valtierra* and *Palmer*.

Lastly, petitioners argue that the decision is inconsistent with *Village of Belle Terre* v. *Boraas,* 416 U.S. 1 (1974) and *Milliken* v. *Bradley,* 418 U.S. 717 (1974). (Pet. 12-13 and 15 respectively) But *Belle Terre* has no relevance, not dealing at all with racial issues. *Milliken* is also irrelevant since the Court of Appeals has not ruled that racial imbalance alone is a constitutional violation. As noted above, the court ruled that the petitioners, absent a compelling public interest, have a duty not to interfere with private desegregation efforts, which they have actively prevented, when the context is one of racial discrimination and dual housing markets.

2. Petitioners also argue that respondents do not have standing and that the Court of Appeals decision conflicts *sub silentio* with *Warth* v. *Seldin,* 45 L.Ed.2d 343 (1975). (Pet. 24-26) Petitioners did not raise the standing issue on appeal. It was not a question presented to the Court of Appeals for review, and this Court will not ordinarily consider issues neither raised before nor considered in the Court of Appeals. See, e.g., *Adickes* v. *S. H. Kress and Co.,* 398 U.S. 144, 147, n.2 (1970) and cases cited.

(footnote continued)

white and one black public swimming pools, with one for whites and one for blacks being subsequently reopened by private persons. (403 U.S. at 218 and 252 respectively). There obviously was no disproportionate impact upon blacks, and the Court never stated there was.

In any event, respondents have standing. The individual respondents have looked for and been unable to find housing they can afford in Arlington Heights (see, e.g., Tr. 220-2) and would be eligible for Lincoln Green. (See, e.g., Tr 43-44; Ps. Ex. 24 [Ex. B]; and Tr. 207-208). They therefore have the particularized personal interest, in a particular project, sufficient to grant them standing. See *Warth* at 358-60 and n. 17-18 and cases cited therein.

3. Petitioners' assertion that the decision below conflicts with those of other circuits also lacks merit. The cases that do deal with the issue at bar are all supportive of the decision below.

Petitioners cite *English* v. *Town of Huntington,* 448 F. 2d 319 (2d Cir. 19) (Pet. 15 and 18) for the proposition that enforcement of an ordinance having a greater impact upon the poor does not render the ordinance invalid under the Equal Protection Clause. Since this case does not deal with economic discrimination, *English* is irrelevant.

Construction Industry Association of Sonoma County v. *City of Petaluma,* ..... F.2d ..... (1975) (Pet. 16-17), is similarly irrelevant. The ordinance in question was, from the point of view of racial minorities, "inclusionary," since, by giving some priority to developments including low- and moderate-income housing, it "offers new opportunities, previously unavailable, to minorities and low- and moderate-income persons." (..... F.2d at ....., n.16).

Ybarra v. *City of the Town of Los Altos Hills,* 503 F.2d 250 (9th Cir. 1974), (Pet. 16) and *Mahaley* v. *Cuyahoga Metropolitan Housing Authority,* 500 F. 2d 1087 (6th Cir. 1974), (Pet. 17), which petitioners cite for the proposition that discrimination on the basis of poverty does not become discrimination on the basis of race because of a sta-

tistical correlation between race and poverty, are readily distinguishable, since the Seventh Circuit explicitly accepted this proposition and went on to rule for respondents on the desegregation ground.* Significantly, unlike the case at bar, the *Mahaley* court emphasized that "[t]here was not even a scintilla of evidence" that the defendant municipalities had ever been asked to approve any subsidized housing projects. (500 F.2d at 1094)

However, when they are asked to do so and where there is residential segregation, the circuits have unanimously ruled that municipalities may not obstruct private desegregation efforts. *U.S.* v. *City of Black Jack,* 508 F.2d 1179, 1184 (8th Cir.), *cert. denied,* 95 S.Ct. 2656 (1975) (Under Title VIII, "[t]he discretion of local zoning officials . . . must be curbed where 'the clear result of such discretion is the segregation of low-income Blacks from all white neighborhoods.' ") (citations omitted); *United Farmworkers of Florida Housing Project* v. *City of Delray Beach,* 493 F. 2d 799, 811 (5th Cir. 1974) (under the Fourteenth Amendment, ". . . in the realm of federally assisted housing, local authorities have an obligation to further the national housing policy of balanced and dispersed public housing [including low- and moderate-income housing] and to refrain from frustrating efforts to carry out that policy.") (citations omitted); *Kennedy Park Homes Assn. Inc.* v.

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* It should be noted that respondents would prevail under the law of the case in *Ybarra,* since the court ruled that a claim of discrimination on the basis of poverty would be sustained if plaintiffs had been able to show that the ordinance prevented them from living in the municipality and that there was inadequate low-cost housing near their jobs. (503 F.2d at 254) Respondents made both showings in the case at bar.

City of Lackawanna, 436 F.2d 108 (2d Cir. 1970), *cert. denied,* 401 U.S. 1010 (1971).*

The Second Circuit in *Acevedo* v. *Nassau County,* 500 F. 2d 1078 (1974), a case petitioners argued is inconsistent with the decision below (Pet. 17), did not challenge cases, including *Delray Beach* and *Lackawanna,* which enjoined ". . . the governmental obstruction of private projects beneficial to minority groups or to integration" (500 F.2d at 1081). It simply held that it would not impose "an affirmative duty to construct housing." (*Id.*)

II.

The Decision Does Not Present an Important Question of Federal Law.

This case merely involves an effort to prevent one municipality from unlawfully interfering with the development of one housing project on one small site in a large urbanized area. Contrary to petitioners' assertions, it does

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*As the Second Circuit stated in *Citizens Committee for Faraday Wood* v. *Lindsay,* 507 F.2d 1065, 1069 (2d Cir. 1974), *cert. denied,* 421 U.S. 948 (1975),

> . . . the City of Lackawanna was clearly segregated . . . Against this background we held that the city could not, absent a compelling interest, thwart the efforts of a private organization to build housing for *low-income* families in the white area of the city by, among other things, refusing to accede to a reasonable rezoning request. Other courts have reached similar results. (Citations omitted).

The *Lindsay* court also stated that, whereas "in the cited cases a city acted to thwart a private developer's attempt to construct housing for low-income persons" and in *Lackawanna* the plaintiffs "merely ask[ed] us to order the city to remove barriers to private development," the *Lindsay* plaintiffs were asking it to order the city to take affirmative steps to insure that the project in dispute would be built. (*Id.*)

not present issues of the affirmative duty of municipalities to construct housing; or to plan for, approve, and promote housing (Pet. 17); or "to take affirmative steps to zone for racial integration" (Pet. 8). Any injunction issued upon remand will be prohibitory; no mandatory action by the petitioners is required. Questions of law which involve the affirmative responsibilities of municipal officials to plan for or construct low- and moderate-income housing can be resolved when a proper case raises the issue before this Court. *Warth, supra,* certainly insures that such an issue will be adjudicated in the most intense adversarial context possible and that petitioners fear of impending doom is groundless.

While the decision below may have a prophylactic effect elsewhere, exclusionary zoning litigation involving but one project is always limited in its application by a plethora of planning, housing, and environmental facts dealing with the parcel and project in issue. Given this, pronouncements of general principles are almost impossible and certainly unwise, at least at this point in time when doctrinal development is still in its infancy. Thus, the Seventh Circuit wisely refrained from pronouncing a broad rule of law and limited the decision to "the facts of this case." (Pet. App. A9-A10)

Petitioners would insist nevertheless that the precedent created invalidates "zoning ordinances . . . around the country." (Pet. 8) But

> ". . . [petitioners'] prophecy of high universal application of a constitutional precept so peculiarly dependent for its invocation upon appropriate facts fails to take into account 'Differences in circumstances [which] beget differences in law,' Whitney v. State Tax Commission, 389 U.S. 530." *Burton* v. *Wilmington Parking Authority,* 365 U.S. 715, 726 (1961)

III.

The Decision is Correct

1. Under the Equal Protection Clause, a municipality cannot obstruct private desegration efforts, *Delray Beach, supra,* especially if within the context of segregation and private discrimination in the housing market, *Lackawanna, supra.*

While there are no cases of this Court directly on point, a number of cases are highly supportive of the analysis undertaken by the Courts of Appeal. It is axiomatic that municipalities cannot directly foster racial segregation. *Buchanan* v. *Warley,* 245 U.S. 60 (1917); *Harmon* v. *Tyler,* 273 U.S. 668 (1926); *City of Richmond* v. *Deans,* 281 U.S. 704 (1930). Since the measure of a state's action is its effect, *Wright* v. *City of Emporia,* 407 U.S. 451, 462 (1972), any action, which, absent a compelling public interest, has the effect of fostering such segregation must fail. It is, after all, "the reality [of] the law's impact" which matters. *Hunter* v. *Erickson,* 393 U.S. 385, 391 (1969). That reality achieves particular significance when the historical context is one of private housing discrimination and when the ultimate effect of the state's action is to permit that discrimination to continue. *Reitman* v. *Mulkey,* 387 U.S. 369, 373 (1967).

Once a conclusion of racial discrimination is drawn, the classification must be justified by a compelling public interest. As the Court of Appeals determined (Pet. App. A10-A11), there is no such compelling public interest here.*

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* Petitioners' repeated assertion that the zoning ordinance is "admittedly" valid by all traditional zoning criteria and that it is "in

(footnote continued)

2. Petitioners' action also violated the Fair Housing Act of 1968 (Title VIII of the Civil Rights Act of 1968, 42 U.S.C. §3601 *et seq.*) and the Civil Rights Act of 1866 (42 U.S.C. §1982). Respondents also urged these grounds below. (Brief for Plaintiffs-Appellants and Intervening Plaintiffs-Appellants, pp. 31-41) Petitioners have violated 42 U.S.C. §3604(a), by denying housing on the basis of race, and 42 U.S.C. §3617, by interfering with the right of equal housing opportunity. *U.S.* v. *City of Black Jack,* 508 F. 2d at 1181. They also have violated 42 U.S.C. §3604 (a), by otherwise making housing unavailable to minorities.

It is elemental that statutes are to be construed so as to effect the intent of the lawmakers. *District of Columbia* v. *Carter,* 409 U.S. 418, 420 (1973). Additionally, "[i]t is well-established that civil rights statutes should be read expansively in order to fulfill their purposes. *See* Griffin v. Breckenridge, 403 U.S. 88, 97 (1971); Daniel v. Paul [395 U.S. 298 (1969)]," *Mayers* v. *Ridley,* 465 F.2d 630, 635 (D.C. Cir. 1972) (*per curiam*) (J. Skelly Wright, J., concurring) (Title VIII case). Section 1982 must be similarly construed. "A narrow construction of the language of §1982 would be quite inconsistent with the broad and sweeping nature of the protection meant to be afforded by §1 of the Civil Rights Act of 1866 [§1982]." *Sullivan* v. *Little Hunting Park,* 396 U.S. 229, 237 (1969).

(footnote continued)

fact conceded that the ordinance would be valid if the 'compelling interest' test was not applied" (Pet. 23) is an astonishing misstatement. Respondents argued at length in the Court of Appeals that they "are entitled to judgment even if the reasonableness standard of traditional zoning cases were appropriate." (Reply Brief for Plaintiffs-Appellants and Intervening Plaintiffs-Appellants, p. 27; *see* discussion at 27-31).

Both the legislative history and judicial construction of Title VIII make it clear that it was designed to make possible the eradication of the social evil of residential segregation and not simply to prohibit private discrimination.

The legislative history of Title VIII consists mainly of the debates on the floor of each house.* In introducing the bill initially, Sen. Mondale indicted segregated housing patterns and the problems they have caused—segregated schools, the unavailability of suburban employment opportunities and the alienation of white and black Americans due to "lack of experience in actually living next" to each other. 114 Cong. Rec. 2274-76.** He went on to quote a 1967 report by the U.S. Commission on Civil Rights to indicate the dimensions of the problems that the amendment was intended to solve. That report noted that, in part, the inability of blacks to secure housing in suburbs and other white areas "stems from the refusal of suburbs and other communities to accept low-income housing" and that "an important factor contributing to the exclusion of the Negro from such areas" is the "policies and practices of agencies of government at all levels." 114 Cong. Rec. 2277.

The Act has consistently been interpreted along these lines. As this Court has said in construing Title VIII,

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* *See U.S.* v. *Hunter,* 459 F. 2d 205, 210, n.4 (4th Cir. 1972)

** *See also, e.g.,* further discussion by Sen. Mondale at 114 Cong. Rec. 3421 and similar statements by other sponsors at 114 Cong. Rec. at 2279-80, 9559, 9591, and 9590. As Sen. Brooke, a co-sponsor of the measure, declared:

> . . . [W]e can and should make it possible for those who can to move to where better schools and services, decent homes and jobs are most plentiful. That is the simple purpose of this bill.

114 Cong. Rec. 2280.

quoting Sen. Mondale, "the reach of the proposed law was to replace the ghettos 'by truly integrated and balanced living patterns,' " *Trafficante* v. *Metropolitan Life Insurance Co.*, 409 U.S. 205, 211 (1972).

Petitioners' actions are in conflict with MHDC's one small effort to bridge the ghetto wall and create an integrated and balanced living pattern.

Equity in addition to law supports the decision below. It is eminently fair. It gives to some blacks trapped in the inner-city the opportunity to use a Congressional program to live in a decent integrated environment where employment and educational opportunities are plentiful.

And what is lost in the process? The proposed development, well-designed housing, of no greater height, and with more open space than the abutting single-family homes, will harmonize with the neighborhood, will have no adverse impact upon municipal facilities and services and, significantly, unlike tax-exempt public housing,* would make a net contribution to the revenues to both the Village and the school districts within which it lies. Lincoln Green is clearly in the *public* interest. Respondents only claim of loss is a *private* interest—a speculative diminution in property values of some Village residents. What is gained for those Americans long victimized by racial discrimination in all its forms trivializes the Village's desperate efforts to protect its insiders who refuse to share their public world.

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* *Compare Valtierra*, 402 U.S. at 143.

CONCLUSION

For the foregoing reasons, respondents respectfully suggest that the petition be denied.

Respectfully submitted,

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Nov. 20, 1975.